



# Employment Act (Northern Ireland) 2010

## 2010 CHAPTER 12

An Act to make provision about the enforcement of legislation relating to employment agencies and the minimum wage; to make provision about the membership of, and representation before, the Industrial Court; to provide for compensation for financial loss in cases of unlawful underpayment or non-payment; and for connected purposes. [2nd August 2010]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### *Employment agencies*

#### **Employment agencies: mode of trial and penalties for certain offences**

1.—(1) In the [Employment \(Miscellaneous Provisions\) \(Northern Ireland\) Order 1981 \(NI 20\)](#), in each of Articles 5B, 6(3) and 7(2), for the words from “on summary conviction” to the end substitute “—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

(2) Subsection (1) does not apply in relation to an offence committed before the commencement of that subsection.

#### **Employment agencies: powers of enforcement**

2.—(1) In the [Employment \(Miscellaneous Provisions\) \(Northern Ireland\) Order 1981 \(NI 20\)](#), Article 7B (powers of officers) is amended as follows.

(2) In paragraph (1) for sub-paragraph (b) substitute—

“(b) inspect—

- (i) any records required to be kept under this Part; and
- (ii) any financial records not falling within head (i) which he may reasonably require to inspect for the purpose of ascertaining whether the provisions of this Part and of any regulations made under this Part are being complied with or of enabling the Department to exercise its functions under this Part;”.

(3) In paragraph (2) for the words from “he may require” to the end substitute “the officer may by notice in writing require the person carrying on the employment agency or employment business to furnish him with the record or information at such time and place as he may specify.”.

(4) After paragraph (2) insert—

“(2A) Where a person carrying on an employment agency or employment business fails to comply with paragraph (2) in relation to any record or information and the officer has reasonable cause to believe that the record or information is kept by—

- (a) a person concerned with the carrying on of the employment agency or employment business, or
- (b) a person formerly so concerned,

the officer may by notice in writing require that person to furnish him with the record or information at such time and place as he may specify.

(2B) Where a person carrying on an employment agency or employment business fails to comply with paragraph (2) in relation to any financial record which is kept by a bank, an authorised officer may by notice in writing require the bank to furnish the record or other document to him at such time and place as he may specify.

(2C) In paragraph (2B)—

- (a) “authorised officer”, in relation to a notice, means an officer who is authorised in relation to that notice by a senior officer of the Department (within the meaning given by Article 2(3) of the [Departments \(Northern Ireland\) Order 1999 \(NI 1\)](#));
- (b) “bank” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits.

(2D) An officer may take copies of any record inspected by or furnished to him under this Article.

(2E) An officer may, for the purposes of paragraph (2D), remove a record from the premises where it is inspected by or furnished to him; but he must return it as soon as reasonably practicable.”.

(5) In paragraph (9)—

- (a) for “sub-paragraph (a) or (b) of paragraph (1)” substitute “paragraph (1) (a) or (b), (2D) or (2E)”;
- (b) for “sub-paragraph (c) of that paragraph or under paragraph (2)” substitute “paragraph (1)(c), (2), (2A) or (2B)”.

### *The Industrial Court*

#### **Membership of the Industrial Court**

3. In Article 91A of the [Industrial Relations \(Northern Ireland\) Order 1992 \(NI 5\)](#) for paragraphs (1) to (7) substitute—

“(1) The Department shall by regulations provide for the membership of the Industrial Court.

(2) Regulations under paragraph (1)—

- (a) shall include provision for the appointment of a chairman;
- (b) may include provision for the appointment of a deputy chairman;
- (c) shall require the appointment as other members of persons experienced in industrial relations, including some persons whose experience is as representatives of employers and some whose experience is as representatives of workers;
- (d) may provide for the functions of the chairman to be exercised in circumstances prescribed by the regulations by the deputy chairman or by another member;
- (e) may provide for the removal or suspension of members in circumstances prescribed by the regulations;
- (f) may provide for the members otherwise to hold and vacate office in accordance with their terms of appointment.”.

#### **Legal representation before the Industrial Court**

4. In Article 92 of the [Industrial Relations \(Northern Ireland\) Order 1992 \(NI 5\)](#)—

- (a) omit paragraph (3)(f); and
- (b) for paragraph (4) substitute—

“(4) In any proceedings before the Court under Article 84(2)(e)(ii) (settlement of trade dispute by arbitration) no person shall be entitled to appear by counsel or solicitor.”.

*Information sharing***Employment agencies and national minimum wage: information**

5.—(1) In the National Minimum Wage Act 1998 (c. 39), in section 15 (information obtained by officers), after subsection (5A) insert—

“(5B) Information to which this section applies—

- (a) may be supplied by, or with the authorisation of, the Secretary of State to an officer acting for the purposes of Part 2 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 for any purpose relating to that Part; and
- (b) may be used by an officer acting for the purposes of that Part for any purpose relating to that Part.”

(2) In the [Employment \(Miscellaneous Provisions\) \(Northern Ireland\) Order 1981 \(NI 20\)](#), in Article 7B (powers of officers), paragraph (10) is amended as follows—

- (a) after “this Article” insert “(or pursuant to section 15(5B) of the National Minimum Wage Act 1998)”;
- (b) after sub-paragraph (d) insert “or
  - (e) to an officer acting for the purposes of the National Minimum Wage Act 1998 for any purpose relating to that Act.”.

*Compensation for financial loss***Compensation for financial loss**

6.—(1) In Article 56 of the [Employment Rights \(Northern Ireland\) Order 1996 \(NI 16\)](#) (determination of complaints relating to deductions from wages or payments to employer)—

- (a) the existing provision becomes paragraph (1), and
- (b) after that provision insert—

“(2) Where a tribunal makes a declaration under paragraph (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that paragraph) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.”.

(2) In Article 198 of that Order (determination of questions relating to redundancy payments), at the end insert—

“(5) Where a tribunal determines under paragraph (1) that an employee has a right to a redundancy payment, it may order the employer to pay

to the employee such amount as the tribunal considers appropriate in all the circumstances to compensate the employee for any financial loss sustained by him which is attributable to the non-payment of the redundancy payment.”.

(3) This section does not have effect in relation to proceedings on a complaint presented to the industrial tribunal before the commencement of this section.

### *Supplementary*

#### **Minor and consequential amendments and repeals**

7.—(1) The statutory provisions set out in Schedule 1 have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 2 are repealed to the extent specified in the second column of that Schedule.

#### **Commencement**

8.—(1) Section 3 comes into operation on such day as the Department for Employment and Learning may by order appoint.

(2) The remaining provisions of this Act come into operation on the day after that on which this Act receives Royal Assent.

(3) An order under subsection (1) may contain such transitional or saving provisions as the Department for Employment and Learning thinks appropriate.

#### **Short title**

9. This Act may be cited as the Employment Act (Northern Ireland) 2010.

## SCHEDULES

### SCHEDULE 1

Section 7.

#### MINOR AND CONSEQUENTIAL AMENDMENTS

*The Employment and Training Act (Northern Ireland) 1950 (c. 29)*

1. In section 1(1A)(d) for “the Department” substitute “any person”.

*The Industrial Training (Northern Ireland) Order 1984 (NI 9)*

- 2.—(1) In Schedule 2 in paragraph 2(2) for head (b) substitute—  
“(b) an equal number of persons appearing to the Department to be representative—  
(i) of employers engaging in the industry; and  
(ii) of employees in the industry;”.
- (2) In Schedule 2 after paragraph 2(2) insert—  
“(2A) The Minister shall consult—  
(a) such organisations representative of employers as appear to the Minister to be appropriate about the arrangements for making an appointment under sub-paragraph (2)(b)(i);  
(b) such organisations representative of employees as appear to the Minister to be appropriate about the arrangements for making an appointment under sub-paragraph (2)(b)(ii).”.

*The Employment and Training (Amendment)  
(Northern Ireland) Order 1988 (NI 10)*

3. In Article 4(1) for “the Department”, in the second place where it occurs, substitute “any person”.

*The Industrial Relations (Northern Ireland) Order 1992 (NI 5)*

- 4.—(1) In Article 69—  
(a) in paragraph (1) omit “, after consultation with the Agency,”; and  
(b) after that paragraph insert—

“(1A) The Department shall consult the Agency about the arrangements for making an appointment under paragraph (1).”.

(2) In Article 92(7) for “The Arbitration Act (Northern Ireland) 1937” substitute “Part 1 of the Arbitration Act 1996”.

(3) In Schedule 4 for paragraph 2 substitute—

“2.—(1) The Agency shall consist of the following persons appointed by the Minister—

(a) a chairman; and

(b) 9 other members of whom—

(i) 3 shall be persons appearing to the Minister to be representative of employers;

(ii) 3 shall be persons appearing to the Minister to be representative of employees; and

(iii) 3 shall be such other persons as appear to the Minister to be appropriate.

(2) The Minister shall consult—

(a) such organisations representative of employers as appear to the Minister to be appropriate about the arrangements for making an appointment under sub-paragraph (1)(b)(i);

(b) such organisations representative of employees as appear to the Minister to be appropriate about the arrangements for making an appointment under sub-paragraph (1)(b)(ii).”.

*The Trade Union and Labour Relations (Northern Ireland) Order 1995 (NI 12)*

5. In Schedule 1A, in paragraph 170A(9), omit “by the Department”.

*The Employment Rights (Northern Ireland) Order 1996 (NI 16)*

6.—(1) In Article 67M(1)(a) for “1974” substitute “1996”.

(2) In Article 130B(1)(a) for “1974” substitute “1996”.

*The Employment Relations (Northern Ireland) Order 2004 (NI 19)*

7. Omit Article 16 (which has not been brought into operation).

## SCHEDULE 2

Section 7.

## REPEALS

Short Title	Extent of repeal
The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (NI 20)	In Article 9A(1), “5B, 6(3), 7(2)”.
The Industrial Relations (Northern Ireland) Order 1992 (NI 5)	In Article 69(1) the words “, after consultation with the Agency,”. Article 92(3)(f).
The Trade Union and Labour Relations (Northern Ireland) Order 1995 (NI 12)	In Schedule 1A, in paragraph 170A(9), the words “by the Department”.
The Employment Relations (Northern Ireland) Order 2004 (NI 19)	Article 16. In Schedule 2, paragraphs 3 and 24(2).